

Firestone

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Wanda K. Sanders  
DEPUTY CLERK COURT  
MIDDLE DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIDGESTONE/FIRESTONE, INC.,  
ALBANY-DOUGHERTY PAYROLL  
DEVELOPMENT AUTHORITY,

Defendants

CIVIL ACTION NO.

94-562-Alb-Amer (WLS)

CONSENT DECREE

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Appendix A - Record of Decision  
Appendix B - Statement of Work

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIDGESTONE/FIRESTONE, INC.,  
ALBANY-DOUGHERTY PAYROLL  
DEVELOPMENT AUTHORITY,

Defendants

CIVIL ACTION NO.

94-56-2-Alb-Rmer (WLS)

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Firestone Tire & Rubber Co. Superfund Site in Albany, Georgia, together with accrued interest; and (2) performance of studies and response work by the Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Georgia (the "State") on June 24, 1993, of negotiations with

potentially responsible parties regarding the implementation of /the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior and the National Oceanic and Atmospheric Administration on June 24, 1993, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The Defendants that have entered into this Consent Decree ("Settling Defendant" and "Owner Settling Defendant") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41000;

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, Defendant Bridgestone/Firestone, Inc., implemented, pursuant to an Administrative Order on Consent dated July 9, 1990, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430;

H. On July 2, 1992, EPA approved a Remedial Investigation ("RI") report completed by Defendant Bridgestone/Firestone, Inc., on November 20, 1992, approved an addendum to the RI report, and on December 22, 1992, EPA approved a Feasibility Study ("FS") report completed by Defendant Bridgestone/Firestone, Inc.;

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on December 30, 1992, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on June 24, 1993, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant and Owner Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant and Owner Settling Defendant waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendant and Owner Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and Owner Settling Defendant and their successors and assigns. Any change in ownership or corporate status of Settling Defendant or Owner Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter Settling Defendant's or Owner Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to the Supervising Contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its Supervising Contractor shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).



#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them under CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXX - Appendices). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all response costs, not inconsistent with the NCP, including, but not limited to, direct

and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and Paragraph 84 of Section XXII. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between July 31, 1993, and the effective date of this Consent Decree and all interest on the Past Response Costs from July 31, 1993, to the date of payment of the Past Response Costs.

"GEPD" shall mean the Environmental Protection Division of Georgia Department of Natural Resources and any successor departments or agencies of the State.

"Groundwater Operation and Maintenance" or "Groundwater O & M" shall mean all activities required to maintain the effectiveness of the Groundwater Remedial Action as required under the Groundwater Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Groundwater Remedial Action" shall mean those activities, except for Groundwater Operation and Maintenance, to be undertaken by the Settling Defendant to implement the final plans

and specifications submitted by the Settling Defendant pursuant to the Groundwater Remedial Design Work Plan and approved by EPA.

"Groundwater Remedial Action Work Plan" or "Groundwater RA Work Plan" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 15(a) of this Consent Decree and described more fully in Paragraph 15(b).

"Groundwater Remedial Design" shall mean those activities to be undertaken by the Settling Defendant to develop the final plans and specifications for the Groundwater Remedial Action pursuant to the Groundwater Remedial Design Work Plan.

"Groundwater Remedial Design Work Plan" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 14(a) of this Consent Decree and described more fully in Paragraph 14(b).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Owner Settling Defendant" shall mean the Albany-Dougherty Payroll Development Authority.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendant.

"Past Response Costs" shall mean all response costs, not inconsistent with the NCP, including, but not limited to, direct and indirect costs and interest, that the United States incurred and paid with regard to the Site prior to July 31, 1993.

"Performance Standards" shall mean those cleanup levels, treatment standards, standards of control, and other substantive requirements, criteria or limitations set forth in Section 9.1 of the ROD, except for the cleanup levels for antimony, beryllium, chromium, lead and carbon disulfide set forth in Section 9.1(2) of the ROD, and any modifications thereto made in accordance with the NCP, and those technical criteria identified by EPA during the Soil Remedial Action and the Groundwater Remedial Design.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on June 24, 1993, by the Regional Administrator, EPA Region IV, and all attachments thereto, incorporated as Appendix A to this Consent Decree.

"Remedial Actions" shall mean, collectively, the Groundwater Remedial Action and the Soil Remedial Action.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendant" shall mean Bridgestone/Firestone, Inc.

"Site" shall mean the Firestone Tire & Rubber Co. Superfund site, encompassing approximately 329 acres, located at 3300 Sylvester Road in Albany, Dougherty County, Georgia, as further described in the Record of Decision.

"Soil Remedial Action" or "Soil RA" shall mean those activities, to be undertaken by the Settling Defendant to implement the final plans and specifications submitted by the Settling Defendant pursuant to the Soil Remediation Work Plan and approved by EPA.

"Soil Remediation Work Plan" shall mean the document submitted by Settling Defendant pursuant to Paragraph 13(a) of this Consent Decree and more fully described in Paragraph 13(b) of this Consent Decree.

"State" shall mean the State of Georgia.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Groundwater Remedial Design, the Remedial Actions, and Groundwater Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2)

any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

"Work" shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

#### V. GENERAL PROVISIONS

##### 5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant and to reimburse response costs of the Plaintiff.

##### 6. Commitments by Settling Defendant

Settling Defendant shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

##### 7. Compliance With Applicable Law

All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all

Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and §300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record a certified copy of this Consent Decree with the Recorder's Office, Registry of Deeds, or other appropriate office in Dougherty County, State of Georgia. Thereafter, and prior to deletion of the Site from

the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, each deed, title or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Owner Settling Defendant with respect to the provision of access under Section X (Access) and the implementation of well use restrictions under Paragraph 10 shall be binding upon the Owner Settling Defendant and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record at the Recorder's Office, Registry of Deeds, or other appropriate office where real property ownership and transfer records are filed in Dougherty County, State of Georgia, a notice of obligations to provide access under Section X (Access) and related covenants. Thereafter, and prior to deletion of the Site from the NPL, each deed, title, or other instrument conveying an interest to any such property included in the Site shall reference the recorded location of the Consent Decree, and shall covenant that the property is subject to this Consent Decree, specifically identifying the obligations under Section X (Access) and Paragraph 10 relating to well use restrictions.



c. Prior to deletion of the Site from the NPL, the Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section X (Access), shall continue to be met by the Owner Settling Defendant. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendant to comply with the Consent Decree.

d. Nothing in this Paragraph shall excuse the Owner Settling Defendant or any Successor-in-Title from any obligation under State law.

10. Well Use Restrictions

a. Within 30 days of the effective date of this Consent Decree, Owner Settling Defendant shall amend its current lease for the Site to require that:

1. Lessee shall not use groundwater from the Residuum, Transition Zone and Upper Ocala aquifers in such a way as to result in human ingestion or dermal contact;

2. Lessee shall not install any on-site groundwater extraction well which will diminish the effectiveness of any groundwater extraction wells used for purposes of CERCLA response actions at the Site; and

3. The lessee shall notify Owner Settling Defendant of the design and location of any proposed well to be installed at the Site not later than 90 days prior to the proposed installation. The design and location of the wells shall be subject to EPA review and approval.

b. Not less than 30 days after receipt of notification from the lessee of proposed well installation, Owner Settling Defendant shall notify EPA of the design and location of any proposed wells to be installed by lessee.

c. Owner Settling Defendant shall condition any lease or lease amendment entered into after the effective date of the Consent Decree on the well use restrictions identified in Paragraph 10(a).

d. The well use restrictions identified in Paragraph 10(a), and the provisions of Paragraph 10(b) and 10(c), shall terminate upon notification by EPA of the Certification of Completion of the Work pursuant to Paragraph 51 of this Consent Decree.

11. EPA reserves all rights to require further response actions under the RI/FS Administrative Order on Consent ("AOC") for this Site dated July 9, 1990, pertaining to antimony, beryllium, chromium, lead and carbon disulfide. The parties

agree that nothing in this Consent Decree grants, creates or waives any rights on behalf of the Settling Defendant or EPA with respect to such additional response actions. Neither such additional response actions, nor any other response actions required by EPA with respect to those hazardous substances shall excuse compliance by Settling Defendant with this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

12. Selection of Supervising Contractor

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within ten (10) days after receiving written notice of signature by EPA of this Consent Decree, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the

State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant of the disapproval and reasons therefore in writing. Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) hereof.

13. Soil Remediation

a. Within 45 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 12, Settling Defendant shall submit for approval to EPA and for review and comment to the State a work plan for the performance of the Soil

Remedial Action at the Site ("Soil Remediation Work Plan"). The Soil Remediation Work Plan, and the other deliverables submitted pursuant to or in conjunction with the Soil Remediation Work Plan, shall provide the procedures and specifications for the implementation of the soil remedy set forth in the ROD in accordance with the SOW and, upon their approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. Within 45 days after EPA's issuance of an authorization to proceed, the Settling Defendant shall also submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Soil Remediation Work Plan shall include plans and schedules for implementation of all soil remediation tasks identified in the SOW, and shall be developed in conjunction with other deliverables identified in the SOW, including, but not limited to, (1) a Soil Remediation Project Implementation Strategy; (2) a Soil Remediation Management Plan; (3) a Soil Remediation Quality Assurance Plan; and (4) a Soil Remediation Health & Safety Plan/Contingency Plan.

c. Within 30 days of receipt of written approval by EPA of the Soil Remediation Work Plan, after a reasonable opportunity for review and comment by the State, and submittal of the Soil Remedial Health and Safety Plan/Contingency Plan for all field activities to EPA and the State, Settling Defendant shall

implement the Soil Remediation Work Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Soil Remediation Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendant shall not commence further Soil Remedial Action activities at the Site prior to approval of the Soil Remediation Work Plan.

14. Remedial Design for Groundwater Remediation.

a. Within 45 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 12, Settling Defendant shall submit for approval to EPA and for review and comment to the State a work plan for the design of the Groundwater Remedial Action at the Site ("Groundwater Remedial Design Work Plan or "Groundwater RD Work Plan"). The Groundwater RD Work Plan, and the other deliverables submitted pursuant to or in conjunction with the Groundwater RD Work Plan, shall provide for design of the groundwater remedy set forth in the ROD with respect to the volatile organic compounds (excluding carbon disulfide) and PCBs identified in Section 9.1(2) of the ROD in accordance with the SOW and, upon their approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. Within 45 days after EPA's issuance of an authorization to proceed, the Settling Defendant shall also submit to EPA and the State a Health and Safety Plan for field design activities relating to the Groundwater Remedial Design which conforms to the

applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Groundwater RD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW to remediate volatile organic compounds (excluding carbon disulfide) and PCBs identified in Section 9.1(2) of the ROD in the groundwater, and shall be developed in conjunction with other deliverables identified in the SOW including, but not limited to, (1) Sampling and Analysis Plan (including, but not limited to, a Quality Assurance Project Plan (QAPP) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis)); (2) a preliminary design submittal; (3) an intermediate design submittal unless EPA, in its sole unreviewable discretion, determines that the preliminary design submittal satisfies the requirements of the intermediate design; and (4) a pre-final/final design submittal. In addition, the Groundwater RD Work Plan shall include a schedule for completion of the Groundwater Remedial Action Work Plan.

c. Within 30 days of receipt of written approval of the Groundwater RD Work Plan and the Sampling and Analysis Plan, by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendant shall implement the Groundwater RD Work Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Groundwater RD Work Plan

in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendant shall not commence further Groundwater Remedial Design activities at the Site prior to approval of the Groundwater RD Work Plan and the Sampling and Analysis Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) results of data acquisition activities; (2) design criteria report; (3) preliminary plans and specifications in outline form; and (4) a plan for satisfying permitting requirements.

e. The intermediate design submittal shall be a continuation and expansion of the preliminary design and shall include, at a minimum, the following: (1) a draft design analysis; (2) draft plans and specifications; (3) a draft construction schedule; and (4) a Performance Standards Verification Plan. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) complete design analysis; (2) final plans and specifications; (3) final construction schedule; and (4) a construction cost estimate.

15. Groundwater Remedial Action

a. Concurrent with the submittal of the pre-final/final design as described in Paragraph 14(f), Settling Defendant shall submit for approval to EPA and for review and



comment to the State, a work plan for the performance of the Groundwater Remedial Action at the Site ("Groundwater Remedial Action Work Plan"). The Groundwater Remedial Action Work Plan, and the other deliverables submitted pursuant to or in conjunction with the Groundwater Remedial Action Work Plan, shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the pre-final/final design submittal as described in Paragraph 14(f), and upon their approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. At the same time as it submits the Groundwater Remedial Action Work Plan, Settling Defendant shall submit to EPA and the State a Construction Health and Safety Plan/Contingency Plan for field activities required by the Groundwater Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Groundwater Remedial Action Work Plan shall include plans and schedules for implementation of all Groundwater Remedial Action tasks identified in the SOW, and shall be developed in conjunction with other deliverables identified in the SOW, including, but not limited to, the following: (1) the schedule for completion of the Groundwater Remedial Action and submittal of other plans required for the Groundwater Remedial Action; (2) a description of the method for selection of the construction contractor; (3) a Project Delivery Strategy; (4) a Construction Management Plan; (5) a Construction Quality

Assurance Plan, and (6) a Groundwater Operation and Maintenance Plan.

c. Upon approval by EPA of the Groundwater Remedial Action Work Plan, and the other deliverables to be developed in conjunction with the Groundwater Remedial Action Work Plan as set forth in the SOW, after a reasonable opportunity for review and comment by the State, Settling Defendant shall implement the activities required under the Groundwater Remedial Action Work Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Groundwater Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Except for the voluntary groundwater remediation activities already underway at the Site, and unless otherwise required or authorized by the AOC or directed by EPA, Settling Defendant shall not commence physical on-site activities relating to the Groundwater Remedial Action at the Site prior to approval of the Groundwater Remedial Action Work Plan and such other deliverables to be developed in conjunction with the Groundwater Remedial Action Work Plan as set forth in the SOW.

16. The Work performed by the Settling Defendant pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

17. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, the Soil Remediation Work Plan, the Groundwater Remedial Design Work Plan or the Groundwater Remedial Action Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards. Settling Defendant's compliance with the work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

18. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The

Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendant following the award of the contract for Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 18(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. ADDITIONAL RESPONSE ACTIONS

19. In the event that EPA determines or the Settling Defendant proposes that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other party.

20. Within 60 days of receipt of notice from EPA or Settling Defendant pursuant to Paragraph 19 that additional response actions are necessary (or such longer time as may be specified by EPA), during which time the Settling Defendant will have an opportunity to confer with EPA, Settling Defendant shall submit for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements

of Paragraphs 13, 14 and 15. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendant shall implement the plan for additional response actions in accordance with the schedule contained therein.

21. Any additional response actions that Settling Defendant proposes are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Settling Defendant in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

22. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 66-69 of this Consent Decree.

#### VIII. EPA PERIODIC REVIEW

23. Settling Defendant shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

24. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendant and the public will be provided with an opportunity to comment on any further response actions proposed

by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region IV, or his/her delegate will determine in writing whether further response actions are appropriate.

25. If the Regional Administrator, EPA Region IV, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Actions are not protective of human health and the environment, the Settling Defendant shall undertake any further response actions EPA has determined are appropriate, unless its liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendant shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA. The Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is ~~not~~ protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendant's liability for the further response actions requested is reserved

in Paragraph 83 or otherwise not barred by the Covenant Not to Sue set forth in Section XXII.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

26. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised August 1991, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon receipt of written notification by EPA to Settling Defendant of such amendment including a copy of the written document. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, an addendum to the Quality Assurance Project Plan ("QAPP") previously approved during the remedial investigation to EPA and the State ~~that~~ is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and

its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendant shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Contract Lab Program data packages are required for all splits, spikes and blanks.

27. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Defendant shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's



implementation of the Work. Except in the case of emergency, EPA shall notify Settling Defendant not less than 14 days in advance of any sampling event to allow splits to be obtained.

28. Settling Defendant shall submit to EPA three (3) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

29. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

#### X. ACCESS

30. Commencing upon the date of lodging of this Consent Decree, the Owner Settling Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Owner Settling Defendant, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

1. Monitoring the Work;
2. Verifying any data or information submitted to the United States;

3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXV; and
7. Assessing Settling Defendant's compliance with this Consent Decree.

31. a. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such persons access for Settling Defendant, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access, but does not include payment of money for access to property which is owned, or to which access is controlled, by any person to which EPA has provided notification of potential liability under Section 107 of CERCLA, 42 U.S.C. § 9607 with respect to the Site. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of

the date EPA notifies the Settling Defendant in writing that additional access beyond that previously secured is necessary, Settling Defendant shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access. Settling Defendant shall reimburse the United States, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access, and not inconsistent with the NCP.

b. Settling Defendant shall use best efforts to provide EPA with an on-site office and adequate office facilities for EPA use in conducting oversight activities.

32. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

#### XI. REPORTING REQUIREMENTS

33. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State three (3) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its

contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts, as required; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 51(b) of Section XV (Certification of Completion). If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

34. The Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the

performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

35. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region IV, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

36. Within 20 days of the onset of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

37. Settling Defendant shall submit three (3) copies of all plans, reports, and data required by the SOWs, the Groundwater RD Work Plan, the Soil Remediation Work Plan, the Groundwater

Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit three (3) copies of all such plans, reports and data to the State.

38. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

39. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above.

40. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 39(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the

event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 39(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

41. a. Upon receipt of a written notice of disapproval pursuant to Paragraph 39(d), Settling Defendant shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Settling Defendant shall also submit a letter report indicating how each comment was addressed. Any stipulated penalties applicable to the submission, as provided in Section XXI (Stipulated Penalties), shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 43.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 39(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

42. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the

right to amend or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as amended or developed by EPA, subject only to its right to invoke the procedures set forth in Section XX (Dispute Resolution).

43. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI (Stipulated Penalties).

44. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.



XIII. PROJECT COORDINATORS

45. Within 20 days of receipt by Settling Defendant of written notice of the signing of this Consent Decree by EPA, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for any of the Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

46. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)

by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when he/she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

47. EPA's Project Coordinator and the Settling Defendant's Project Coordinator will meet as needed.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

48. Within 30 days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$2,000,000 in one of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendant; or
- (e) A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f).

49. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 48(d) of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 48(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 48 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

**XV. CERTIFICATION OF COMPLETION**

**50. Completion of the Remedial Actions**

a. Within 90 days after Settling Defendant concludes that the Remedial Actions have been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-

certification inspection, the Settling Defendant still believes that the Remedial Actions have been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Actions have been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Actions or any portion thereof have not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Remedial Actions and achieve the Performance Standards. EPA will set forth in the notice a

schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Actions have been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Actions for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Actions shall not affect Settling Defendant's obligations under this Consent Decree.

51. Completion of the Work

a. Within 90 days after Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and

EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing.

XVI. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Emergency Response and Removal Branch, Region IV. Unless EPA determines that the defenses under Section 107(b) of CERCLA, 42 U.S.C. § 9607(b), are available to the Settling Defendant, with respect to the release or threatened release, Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to

the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

#### XVII. REIMBURSEMENT OF RESPONSE COSTS

54. Within 30 days of the receipt of written notice of the effective date of this Consent Decree, Settling Defendant shall pay to the United States \$348,333.04, in reimbursement of Past Response Costs, by Electronic Funds Transfer ("EFT" or "wire transfer") to the U.S. Department of Justice lockbox bank, referencing the CERCLA Site AL and the U.S.A.O. file number to be provided by the United States. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendant upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox after 11:00 A.M. (Eastern Time) will be credited on the next business day.

55. Settling Defendant shall reimburse the United States for all Future Response Costs not inconsistent with the National



Contingency Plan incurred by the United States. The United States will send Settling Defendant a bill requiring payment that includes a cost summary of direct and indirect costs incurred by EPA, DOJ and their contractors on an annual basis. Settling Defendant shall make all payments within 60 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 56 and Paragraph 57. The Settling Defendant shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund" and referencing CERCLA Site AL and DOJ Case Number 90-11-3-1130. The Settling Defendant shall forward the certified check(s) to:

U.S. Environmental Protection Agency  
Region IV  
Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia, 30384  
Attn: Collection Officer for Superfund

The Settling Defendant shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions).

56. Within 15 days of Settling Defendant's receipt of a bill under Paragraph 55, Settling Defendant may request cost documentation supporting the cost of the bill. Documentation which may be requested includes:

1. With respect to contractor costs: Invoices and work plans, subject to business information confidentiality claims of the contractor;

2. With respect to travel charges: expense reports, but not individual receipts and travel authorization forms;
3. With respect to payroll charges, a summary listing of each employee and his/her total hours, the hourly charge, and the time periods during which the payroll charges were incurred.

Subject to Paragraph 57, Settling Defendant shall make the payments required by Paragraph 55 within 60 days of receipt of the documentation requested under this Paragraph 56.

57. Settling Defendant may contest payment of any Future Response Costs under Paragraph 55 if it determines that the United States has made an accounting error, if it alleges that a cost item that is included represents costs that are inconsistent with the NCP or if it alleges that the costs were not incurred at or in connection with the Site. Such objection shall be made in writing within 30 days of receipt of the bill under Paragraph 55 if no request for documentation is made under Paragraph 56, or within 30 days of receipt of any cost documentation requested under Paragraph 56, and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 55. The Settling Defendant

shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs. Simultaneously with the submission of a written objection to a bill for Future Response Costs, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 55. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 55; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

58. In the event that the payments required by Paragraph 54 are not made within 30 days of receipt of written notice of the effective date of this Consent Decree, or the payments required by Paragraph 55 are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay

interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendant's receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

59. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the

Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

60. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

61. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Actions pursuant to Paragraph 50(b) of Section XV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of \$1,000,000, combined single limit, naming as additional insured the United States. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit or cause to be resubmitted such certificates and copies of policies each year on the anniversary of the submission of the certificates of insurance. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

62. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant or of any entity controlled by Settling Defendant, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region IV, within 72 hours of when Settling Defendant first knew or should have known that the event might cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in

writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. Settling Defendant shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

64. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that



the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision and the reasons for that decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

65. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's written notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 62 and 63, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XX. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or

with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

67. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute. The period of informal negotiations between the Parties shall conclude upon either receipt by Settling Defendant of written notice from EPA or after 20 days from the time the dispute arises, whichever occurs first.

68. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether

formal dispute resolution should proceed under Paragraphs 69 or 70.

b. Within 14 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 69 or 70.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 69 or 70, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 69 and 70.

69. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree;

and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute. EPA shall make the record available for review and copying upon request.

b. The Director of the Waste Management Division, EPA Region IV, will issue a final written administrative decision resolving the dispute based on the administrative record described in Paragraph 69(a). This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 69(c) and (d).

c. Any administrative decision made by EPA pursuant to Paragraph 69(b) shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant with the Court and served on all Parties within 14 days of receipt of EPA's written decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United

States may file a response to Settling Defendant's notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs 69(a).

70. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 68, the Director of the Waste Management Division, EPA Region IV, will issue a final written decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendant unless, within 14 days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent

Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

71. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 80. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

#### **XXI. STIPULATED PENALTIES**

72. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 73, 74 and 75 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure) or unless otherwise waived by the United States in its sole unreviewable discretion. "Compliance" by

Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

73. a. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 7th day
\$2,500	8th through 45th day
\$7,500	46th day and beyond

b. Violations subject to stipulated penalties under this Paragraph include:

1. Failure to submit or modify the Soil Remediation Work Plan;
2. Failure to submit or modify the Soil Remediation Project Implementation Strategy;
3. Failure to submit or modify the Soil Remediation Management Plan;
4. Failure to submit or modify the Soil Remediation Quality Assurance Plan;

5. Failure to submit or modify the Soil Remediation Health and Safety Plan/Contingency Plan;
6. Failure to submit or modify the Groundwater Remedial Design Work Plan;
7. Failure to submit or modify the Sampling and Analysis Plan;
8. Failure to submit or modify the Health and Safety Plan;
9. Failure to submit or modify the Preliminary Design;
10. Failure to submit or modify the Intermediate Design, if required by EPA;
11. Failure to submit or modify the Prefinal/Final Design;
12. Failure to submit or modify the Groundwater Remedial Action Work Plan;
13. Failure to submit or modify the Project Delivery Strategy;
14. Failure to submit or modify the Construction Management Plan;
15. Failure to submit or modify the Construction Quality Assurance Plan;
16. Failure to submit or modify the Construction Health and Safety Plan/Contingency Plan;
17. Failure to submit or modify the Final Construction Report;



18. Failure to submit or modify the Groundwater Operation and Maintenance Plan;
  19. Failure to submit or modify any work plans for work required under Section VII (Additional Response Actions) or Section VIII (EPA Periodic Review) or to submit any schedule for work required by EPA under Section XV (Certification of Completion);
  20. Failure to provide or maintain financial assurance as required by Section XIV (Assurance of Ability to Complete Work);
  21. Failure to provide certificates of insurance under Section XVIII (Indemnification and Insurance);
  22. Failure to submit or modify the Performance Standards Verification Plan;
74. Stipulated penalties shall accrue at the rate of \$500 per violation per day for any other violation of this consent decree, including but not limited to:
- a. Failure to submit timely or adequate reports or other written documents pursuant to Section XI (Reporting Requirements);
  - b. Failure to make payments required by Section XVII (Reimbursement of Response Costs) or Section XXI (Stipulated Penalties);

- c. Failure to identify the Settling Defendant's Project Coordinator in accordance with Section XIII (Project Coordinators) Consent Decree;
- d. Failure to provide notification of contractor selection under Section VI (Performance of the Work).

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 of Section XXII (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$50,000.

76. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

77. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

78. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling

Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. Environmental Protection Agency  
Region IV  
Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia, 30384  
Attn: Collection Officer for Superfund

Each check shall reference CERCLA Case AL and DOJ Case Number 90-11-3-1130. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

79. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

80. Penalties shall continue to accrue as provided in Paragraph 76 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant

shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

81. a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 78 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

82. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraph 83 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) for performance of the Work and for recovery of Past Response Costs and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 54 of Section XVII (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

83. General Reservations of Rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 82. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred by the Department of the Interior or the National Oceanic and Atmospheric Administration;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Actions;

(7) previously incurred costs of response above the amounts reimbursed pursuant to Paragraph 54;

(8) liability for additional response actions at the Site related to antimony, beryllium, chromium, lead and carbon disulfide in the groundwater, for which cleanup levels are set in Section 9.1(2) of the ROD, for additional operable units at the Site or the final response action; and

(9) liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.

84. In the event EPA determines that Settling Defendant has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendant may invoke the

procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendant failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVII (Reimbursement of Response Costs).

85. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

**XXIII. COVENANTS BY SETTLING DEFENDANT**

86. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendant reserves, and this Consent Decree is without prejudice to, actions against the United States based on

negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendant plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

87. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

88. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendant is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).



89. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

90. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree it will notify in writing the United States within 20 days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

91. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiff).

XXV. ACCESS TO INFORMATION

92. Settling Defendant shall provide to EPA, upon request, copies of all non-privileged documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

93. a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

94. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### XXVI. RETENTION OF RECORDS

95. Until six (6) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 51(b) of Section XV (Certification of Completion), Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or

control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 51(b) of Section XV (Certification of Completion), Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

96. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other

information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

97. Settling Defendant hereby certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

#### XXVII. NOTICES AND SUBMISSIONS

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Re: DOJ # 90-11-3-1130

and

Director, Waste Management Division  
United States Environmental Protection Agency  
Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

As to EPA:

Charles L. King, Jr.  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

Copies of checks and notices of payments made under this Consent Decree shall be sent to:

Carolyn McCall  
Cost Recovery Section  
Waste Management Division  
United States Environmental Protection Agency  
Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

As to the Settling Defendant:

Alva King  
Environmental Affairs  
Bridgestone/Firestone, Inc.  
1200 Firestone Parkway  
Akron, Ohio 44317-0001

with copies to:

James K. Vines, Esq.  
Bridgestone/Firestone, Inc.  
50 Century Boulevard  
Nashville, Tennessee 37214

and

Stephen C. Jones, Esq.  
Jones, Day, Reavis & Pogue  
Metropolitan Square  
1450 G. Street, N.W.  
Washington, D.C. 20005-2088

XXVIII. EFFECTIVE DATE

99. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

100. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

101. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

XXXI. COMMUNITY RELATIONS

102. Settling Defendant shall confer with EPA to determine its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

103. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendant. All such modifications shall be made in writing.

104. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a



reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

105. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

106. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

107. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

108. The undersigned representatives of the Settling Defendant and Owner Settling Defendant and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certify that they are fully authorized to enter into

the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

109. Settling Defendant and Owner Settling Defendant hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant and Owner Settling Defendant in writing that it no longer supports entry of the Consent Decree.

110. Settling Defendant and Owner Settling Defendant shall each identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant and Owner Settling Defendant hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 8th DAY OF August, 1994.

  
United States District Judge

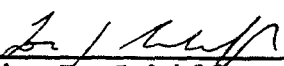
ENTERED ON DOCKET


\_\_\_\_\_, 19\_\_\_\_  
Gregory J. Leonard, Clerk  
by \_\_\_\_\_  
Deputy Clerk

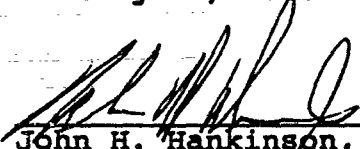
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Bridgestone/Firestone, Inc., et al. relating to the Firestone Tire & Rubber Co. Superfund Site.

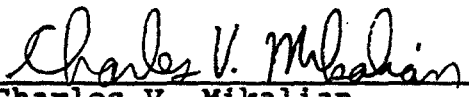
FOR THE UNITED STATES OF AMERICA

Date: 7/7/97

  
Lois J. Schiffer  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

  
Gail E. Kelleher  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

  
John H. Hankinson, Jr.  
Regional Administrator  
Region IV  
U.S. Environmental Protection  
Agency  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

  
Charles V. Mikalian  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
Region IV  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365

United States v. Bridgestone/Firestone, Inc., et al.  
Consent Decree Signature Page

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bridgestone/Firestone, Inc., et al., relating to the Firestone Tire & Rubber Co. Superfund Site.

FOR BRIDGESTONE/FIRESTONE, INC.

Date:

1/28/94

Donald L. Groninger

Donald L. Groninger  
Senior Vice President and General Counsel  
50 Century Blvd., Nashville, TN 37214

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corporation  
Title: Agent For Service Of Process  
Address: 1201 Peachtree Street, N.E., Atlanta, GA 30361  
Tel. Number: 404-888-6488

United States v. Bridgestone/Firestone, Inc., et al.  
Consent Decree Signature Page

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Bridgestone/Firestone, Inc., et al., relating to the Firestone Tire & Rubber Co. Superfund Site

FOR ALBANY-DOUGHERTY PAYROLL DEVELOPMENT AUTHORITY

Date:

2/2/94



← Sign here please

[Name -- Please Type] GIL BARRETT  
[Title -- Please Type] CHAIRMAN  
[Address -- Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] JAMES E. REYNOLDS, JR.  
Title: ATTORNEY AT LAW, PERRY, WALTERS & LIPPITT  
Address: P. O. BOX 469, ALBANY, GA 31702-0469  
Tel. Number: (912) 432-7481

APPENDIX A  
RECORD OF DECISION

APPENDIX B  
STATEMENT OF WORK